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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File: [REDACTED] Office: SAN FRANCISCO, CA

Date: JAN 09 2002

IN RE: Applicant: [REDACTED]

Application: Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. 1182(i)

IN BEHALF OF APPLICANT: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud or willful misrepresentation. The applicant is the unmarried daughter of a naturalized United States citizen and is the beneficiary of an approved petition for alien relative. She seeks the above waiver in order to remain in the United States and adjust her status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the applicant states that she has lived half of her life with no rest, trying to develop and succeed like everyone else and be close to her family. She states that she feels it is not worth it to give up now considering how far she has gotten and that there is a lesson behind her current situation that is leaving marks and making unexpected changes.

The record reflects that the applicant sought to procure admission into the United States on February 2, 1986 by falsely claiming to be a citizen of the United States.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is

inadmissible.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record reflects that the applicant initially entered the United States without inspection in 1984. She has a history of encounters, arrests, and convictions for a variety of public nuisance crimes including five arrests for assault, two for possession of marijuana, one arrest for vandalism, and one for disturbing the peace. Her arrests have resulted in one conviction and court ordered diversion.

The applicant has two children, a daughter born in Mexico in 1983 and a son born in the United States in 1989. The applicant lives in her own apartment with her son and her mother and daughter reside together in the mother's home.

On appeal, the applicant submits letters from her mother and children indicating that they are a close-knit family. The mother states that she is in ill health, that it will soon be harder for her to work, and that the applicant will help her in the future to pay off her mortgage. There is no evidence contained in the record that the applicant's mother is financially dependent upon the applicant or that the mother has a significant condition of health for which treatment would be unavailable in Mexico.

The applicant's daughter states that she cannot return to Mexico if removed with her mother because she takes care of her grandmother and does not speak Spanish. The son states that it would be an extreme hardship for him to move to Mexico as well because he also cannot speak Spanish and all his friends are in the United States.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal disruptions involved in the removal of a family member. Hardship to the applicant herself or her children is not a consideration in section 212(i) proceedings. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application of waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.